

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 305 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SYNBIOTICS LIMITED

Versus

COMMISSIONER OF INCOME TAX

Appearance:

MR KC PATEL for Petitioner
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 28/04/99

ORAL JUDGEMENT

In this reference at the instance of the assessee, four question arising out of the Tribunal order in ITA No. 1243/Ahd/82 for assessment years 1977-78 has been referred to this court for its opinion:-

1. "Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in

confirming the disallowance of gratuity liability of Rs.83,036/- claimed by the assessee u/s. 28 and/or 37 of the Income-tax Act, 1961?"

2. It has been pointed out by the Learned Counsel of the parties that question may be answered in the affirmative i.e. in favour of Revenue and against the assessee in view of the decision in Shree Sajan Mill Ltd Vs. CIT M.P. & Another, 156 ITR 585 in which it has been held that since the insertion of Section 40 A (7) in the Income Tax Act, 1961, claim relating to the provision of gratuity can only be allowed in terms thereof and not otherwise. There is no dispute of the conditions of Sec. 40 A(7) have not been complied with by the assessee. Following the aforesaid decision the aforesaid question is answered in the affirmative that is to say in favour of the Revenue and against the Assessee.

2. "Whether on the facts and in the circumstances of the case, the Tribunal was justified in confirming the disallowance of guarantee commission of Rs.19,549/-?".

3. It has been held by the Supreme Court in CIT, Bombay Vs. M.L.Bhapkar 207 ITR 467 that guarantee commission paid to the bank is a business expenditure allowable under Section 37 of the Income Tax Act, 1961 and cannot be considered to be a capital expenditure. In view thereof, the question no.2 is answered in the negative that is to say in favour of the assessee and against the Revenue.

3. "Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the exchange loss of Rs.291541/- incurred by the assessee was not allowable as a revenue deduction?".

4. Learned Counsel for the assessee states that in view of the decision of this Court in Commissioner of Income Tax Vs. Windsor Foods Ltd. reported in 235 ITR 249 which gives the answer to this question in affirmative. The question is therefore answered in the affirmative that is to say in favour of the Revenue and against the Assessee.

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the provisions of section 37(3) of the Act read with Rule 60(2) of I.T. Rules were applicable to the travelling expenses incurred by

the Directors?".

5. Learned Counsel for the assessee states that he has instructions not to press for this question. Accordingly, we decline to answer this question.

6. The Reference stands disposed of as above. No orders as to costs.

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